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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 230

NATURAL GAS PIPE LINE COMPANY OF AMERICA,
Appellant,

vs.

JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

J. J. HEDRICK,
DONALD F. MCPHERSON,
HOWARD NEITZERT,
Counsel for Appellant.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity.

No. 15562

NATURAL GAS PIPE LINE COMPANY OF AMERICA, A CORPORATION,

vs.

JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE AND HARRY A. BARR, THE PERSONS CONSTITUTING THE ILLINOIS COMMERCE COMMISSION OF THE STATE OF ILLINOIS, AND OTTO KERNER, ATTORNEY GENERAL OF THE STATE OF ILLINOIS.

The proposed appeal from the order of the three-judge court organized pursuant to the provisions of Section 266 of the Judicial Code, and sitting in the above captioned cause, denying plaintiff's application for an interlocutory injunction is authorized by Section 266 of the Judicial Code (28 U. S. C. A. 380) and involves the validity of an order of the Illinois Commerce Commission, entered March 3, 1937, wherein it is

> "Ordered by the Illinois Commerce Commission that Natural Gas Pipe Line Company of America be, and the same is hereby, ordered and directed to file forth-

with in this proceeding on or before the Fifteenth (15th) day of March, A. D., 1937, a true and accurate report as to the cost of the property of said Natural Gas Pipe Line Company of America which is used in supplying natural gas to said Chicago District Pipeline Company and a statement of the income and expenses in connection with supplying gas to said Chicago District Pipeline Company, or to report to this Commission, in substitution thereof, a true and accurate statement as to the cost of all of its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expenses for such operations.

"It is Further Ordered that the said Natural Gas Pipe Line Company of America make available for the examination of the Commission, or such of its officers, agents and employees as it may designate, all of its accounts and records relating to transactions between the said Natural Gas Pipe Line Company of America and the said Chicago District Pipeline Company, including all accounts and records as to joint or several expenses, any portion of which may be applicable to said transactions."

Said order is based upon the provisions of Section 8a of an Act of the General Assembly of the State of Illinois, entitled, "An Act Concerning Public Utilities", approved June 29, 1921 and in force July 1, 1921, as amended (Chapter 111-A, Illinois Revised Statutes, 1935, Section 23(1)), which provides in part as follows:

"(2) The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to

require such reports with respect to such transactions to be submitted by such affiliated interests, as the commission may prescribe. For the purpose of this section, the phrase 'affiliated interests' means:

* * * * * * *

(c) Every corporation, ten per centum or more of whose voting capital stock is owned by any person or corporation owning ten per centum or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of ten per centum or more of voting capital stock;"

The order appealed from was entered on July 2, 1937, and application for appeal is presented to the Court this 9th day of July, 1937.

This case involves the constitutionality of the State statute and order of the Illinois Commerce Commission referred to above. It is contended that the statute and the order are in contravention of the Constitution of the United States, especially Article 1, Section 6, Paragraph 3, and the Fourteenth Amendment, and the Constitution of the State of Illinois, especially of Section 6, Article 2 thereof. The statute subjects to the jurisdiction of the Illinois Commerce Commission every person, firm and corporation holding 10% or more of the capital stock of an Illinois Public utility, and every corporation, 10% of whose capital stock is owned by an Illinois public utility. The constitutionality of the statute is a matter of grave doubt and considerable public importance, yet unless the plaintiff is granted an interlocutory injunction in this case the plaintiff will not have an opportunity to assert its constitutional rights in the three-judge court organized pursuant to Section 266 of the Judicial Code for the reason that if the plaintiff refuses to comply with the order of the Illinois Commerce Commission, the officers, attorneys, agents and employees of

the plaintiff, under the provisions of Sections 76 and 77 of the Illinois Public Utilities Act (Chapter 111-A, Illinois Revised Statutes of 1935, paragraphs 95 and 96), become subject to criminal prosecution, and the plaintiff to a maximum fine of Two Thousand Dollars ($2000) a day for the period of non-compliance. These drastic penalties preclude plaintiff's non-compliance pending a trial on the merits unless the plaintiff is given the protection of a restraining order. But if the plaintiff does comply with the demands of the Commission there is no further point or substance to this proceeding. The plaintiff's damage will be immediate, complete and irreparable upon compliance with the order, and the plaintiff will suffer great injury resulting from the expense of compliance, disclosure of its trade secrets and methods of doing business and the destruction of its credit and its interstate commerce will be burdened, hampered and obstructed.

The three-judge court organized pursuant to Section 266 of the Judicial Code has abused its discretion in overlooking these important considerations and summarily and without a hearing on the merits holding the order of the Illinois Commerce Commission and the above quoted portions of Section 8a of the Illinois Public Utilities Act constitutional, as applied to the plaintiff.

We believe that Section 266 of the Judicial Code (28 U. S. C. A. 380) and the following cases sustain the jurisdiction of the Supreme Court to hear this appeal:

Herkness v. *Irion*, 278 U. S. 92;
Cumberland Telephone Company v. *Public Service Commission*, 260 U. S. 212;
In Re Buder, 271 U. S. 461;
Shaffer v. *Carter*, 252 U. S. 37;
Oklahoma Natural Gas Co. v. *Russell*, 261 U. S. 290;
Pendergast v. *New York Telephone Co.*, 262 U. S. 43.

A copy of the order appealed from, memorandum of the Court and findings of fact and conclusions of law, filed on July 2, 1937, in connection with the entry of the order herein appealed from, are attached hereto.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
By J. J. HEDRICK,
DONALD MCPHERSON,
HOWARD NEITZERT,
Its Attorneys.

SIDLEY, MCPHERSON, AUSTIN & BURGESS,
Attorneys for Plaintiff,

Chicago, Illinois, July 9, 1937.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

IN EQUITY.

No. 15562.

NATURAL GAS PIPELINE COMPANY OF AMERICA, a Corporation,

vs.

JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE and HARRY A. BARR, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and OTTO KERNER, Attorney General of the State of Illinois.

Order.

The above entitled cause having come on to be heard on application of the plaintiff for an interlocutory injunction, and the parties having appeared by their respective counsel, and the court having heard arguments in support of their respective contentions and being duly advised in the premises;

It is Hereby Ordered, Adjudged and Decreed that the application of the plaintiff, Natural Gas Pipeline Company of America, a corporation, for an interlocutory injunction in this cause be, and the same is hereby, denied.

It is Further Ordered, Adjudged and Decreed that the effect of this order should be, and it is hereby, stayed for a period of not to exceed thirty (30) days from the date hereof, in order to provide said plaintiff, Natural Gas Pipeline Com-

pany of America, an opportunity to perfect its appeal to the Supreme Court of the United States.

Chicago, Illinois, July 2, 1937.

Enter:

WILLIAM M. SPARKS,
Judge of the United States Circuit Court of Appeals for the Seventh Circuit.

JOHN P. BARNES,
Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

WILLIAM H. HOLLY,
Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

EXHIBIT "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 15,562.

NATURAL GAS PIPELINE COMPANY OF AMERICA, a Corporation,

vs.

JAMES M. SLATTERY *et al.*

Memorandum.

The court is of the opinion that the right of the Illinois Commerce Commission to the information which may be disclosed by an examination of the records of the plaintiff is not dependent upon the validity of the Illinois statute which seems to be particularly relied upon by counsel for the Illinois Commerce Commission. The Illinois Commerce Com-

mission has a right to fix the rates to be charged by the Chicago District Pipeline Company, and, in order to do so, it has the power to determine what the operating costs of the Chicago District Pipeline Company should be. In order that the Commission may determine these costs, it has the right to get information wheresoever it may be found within its jurisdiction. If the records of the plaintiff contain such information, the Illinois Commerce Commission can compel the production of those records before it. It is true that a procedure by way of a subpœna duces tecum would be the more usual method, but there is no essential difference between the command of a subpœna duces tecum and the order of the Commission which is sought to be restrained. If the plaintiff preferred to produce its records only in response to a subpœna it might have pointed out this supposed defect of procedure to the Commission. Furthermore, if the order is somewhat broader than may be necessary, this, likewise, could have been pointed out to the Commission by way of motion. As far as this court can see, there is no reason for the intervention of this court by way of injunction.

WILLIAM M. SPARKS,
Circuit Judge.
JOHN P. BARNES,
District Judge.
WILLIAM H. HOLLY,
District Judge.

EXHIBIT "C".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

IN EQUITY.

No. 15562.

NATURAL GAS PIPELINE COMPANY OF AMERICA, a Corporation,

vs.

JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE and HARRY A. BARR, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and OTTO KERNER, Attorney General of the State of Illinois.

Findings of Fact and Conclusions of Law.

The above entitled cause having come on to be heard on application of the plaintiff for an interlocutory injunction and the parties having appeared by their respective counsel, the court having heard arguments in support of their respective contentions and being duly advised in the premises now finds as findings of fact that:

1. On the 11th day of March, A. D. 1937, the plaintiff herein filed in this court a complaint in equity praying that a writ of injunction issue to restrain the persons constituting the Illinois Commerce Commission and Otto Kerner, Attorney General of the State of Illinois, from enforcing an order of the said Commission.

2. Said cause was assigned for hearing to the Honorable William H. Holly, one of the judges of this court, and in accordance with the provisions of Section 266 of the Judicial Code of the United States of America the said judge did call to hear this application for an interlocutory injunction with him the Honorable Will M. Sparks, Circuit Judge

of the Seventh Circuit, and the Honorable John P. Barnes, another of the judges of this Court.

3. On the 8th day of April, A. D. 1937, the said three judges heard the arguments of counsel for the respective parties on the application for an interlocutory injunction, and thereafter said counsel filed memoranda of authorities in support of their respective contentions.

4. The defendants agreed not to enforce the order of the Illinois Commerce Commission dated March 3, 1937 pending the decision of the court on the application for an interlocutory injunction.

5. The court has jurisdiction of the subject matter of and the parties to this proceeding.

6. The plaintiff, Natural Gas Pipeline Company of America, is a corporation organized under and existing by virtue of the laws of the State of Delaware, and that it has offices at 19-20 Dover Green, Dover, Delaware, and at 20 North Wacker Drive, Chicago, Illinois.

7. The defendants, James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane and Harry A. Barr are the persons presently constituting the Illinois Commerce Commission, which is an administrative body created by and acting under and pursuant to an act of the General Assembly of the State of Illinois entitled "An Act concerning public utilities," approved June 29, 1921, and in force July 1, 1921, commonly referred to as the "Public Utilities Act" and that the defendant, Otto Kerner, is the Attorney General of the State of Illinois, the legal counsel for the Illinois Commerce Commission, and that he is charged with the duty of commencing and conducting suits and proceedings to enforce the orders of the Commission and the provisions of the Public Utilities Act, and to recover and enforce the fines and penalties imposed by the Public Utilities Act for its violation or the violation or non-obedience of the orders of the Illinois Commerce Commission, and that each of said defendants is a resident and citizen of the State of Illinois.

8. This is a suit of a civil nature arising under the Constitution of the United States of America between citizens of different states within the equity jurisdiction of the District Court of the United States and that the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00).

9. On or about the 17th day of November, A. D. 1936, the Illinois Commerce Commission issued a citation (attached to bill of complaint herein as Exhibit C) against the Chicago District Pipeline Company, an Illinois corporation, requiring the said company to appear before it and show cause, if any there might be, why the rates charged by said company for gas sold to operating companies should not be reduced.

10. Thereafter, on March 3, 1937, in the same proceeding the said Illinois Commerce Commission entered another order (attached to bill of complaint herein as Exhibit D) directed to the Natural Gas Pipeline Company of America, plaintiff herein, requiring it to file with the Commission a true and accurate report as to the cost of the property of said Natural Gas Pipeline Company of America which is used in supplying natural gas to said Chicago District Pipeline Company and a statement of the income and expenses in connection with supplying gas to said Chicago District Pipeline Company, or to report to the Commission in substitution thereof a true and accurate statement as to the cost of all of its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expenses of such operations, and further ordering that the said Natural Gas Pipeline Company of America make available for the examination of the Commission, or such of its officers, agents or employees as it might designate, all of said Natural Gas Pipeline Company of America's accounts and records relating to transactions between the said Company and the said Chicago District Pipeline Company, including all accounts and records as to joint or several expenses, any portion of which might be applicable to said trans-

actions, and that this order which the plaintiff now seeks to restrain was served upon plaintiff.

11. The plaintiff is engaged in the sale, transportation and delivery of natural gas from a point or points in the State of Oklahoma to distributors and consumers of natural gas in the States of Kansas, Nebraska, Iowa and Illinois, and that 85% of such natural gas is sold and delivered to distributors and consumers thereof in the State of Illinois.

12. Such natural gas is transported from said point or points in the State of Oklahoma to said consumers or distributors of natural gas in the States of Kansas, Nebraska, Iowa and Illinois by means of pipelines and pumping stations.

13. On or about the 25th day of July, A. D. 1931, the plaintiff, then known as the Continental Construction Corporation, and Chicago District Pipeline Company, an Illinois corporation, made and executed an agreement in writing for the sale of natural gas to the said Chicago District Pipeline Company and that said contract was modified on or about the 31st day of December, A. D. 1935, when the plaintiff and the Chicago District Pipeline Company made and executed a certain agreement of forbearance.

14. Chicago District Pipeline Company is engaged in the sale, transportation and delivery of natural gas within the State of Illinois, being solely engaged in intrastate commerce and is a public utility within the scope and meaning of the Public Utilities Act and subject to and under the jurisdiction of the Illinois Commerce Commission, pursuant to the terms and provisions of the said Public Utilities Act.

15. All of the stock of Chicago District Pipeline Company is owned by Natural Gas Investment Company, an Illinois corporation.

16. The stock of Natural Gas Investment Company is owned by these corporations in the following amounts:

Peoples Gas Subsidiary Corporation, an Illinois Corporation	79.54%
Commonwealth Subsidiary Corporation, an Illinois Corporation	4.28%
Public Service Company of Northern Illinios, an Illinois Corporation	16.18%

17. All of the outstanding capital stock of the Peoples Gas Subsidiary Corporation, an Illinois corporation, is owned by The Peoples Gas Light and Coke Company, an Illinois corporation, and that all of the outstanding capital stock of the Commonwealth Subsidiary Corporation, an Illinois corporation, is owned by Commonwealth Edison Company, an Illinois corporation.

18. The outstanding capital stock of the plaintiff is held by the following named corporations substantially in the amounts indicated:

Natural Gas Investment Company, an Illinois corporation	26.63%
Cities Service Company, a Delaware corporation	26.63%
The Texas Corporation, a Delaware corporation	17.58%
Standard Oil Company, a New Jersey corporation	13.31%
Southwestern Development Company, a Colorado corporation	13.31%
Columbian Corporation Company, a Delaware corporation	2.53%

19. The board of directors of the plaintiff corporation consists of nine members, and that at all times since the incorporation of said plaintiff two of the members of said board have been members of the board of directors of either Natural Gas Investment Company, Insull, Son & Co., Inc. and The Peoples Gas Light and Coke Company.

20. Section 8a of the Public Utilities Act in part provides as follows:

"(2) The Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon,

with public utilities under the jurisdiction of the commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to acounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the commission may prescribe. For the purpose of this section, the phrase 'affiliated interests' means:

• • • • • • •

(c) Every corporation, ten per centum or more of whose voting capital stock is owned by any person or corporation owning ten per centum or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of ten per centum or more of voting capital stock;

• • • • • • •

(f) Every corporation which has one or more elective officers or one or more directors in common with such public utility."

21. The said Natural Gas Pipeline Company of America, plaintiff herein, is affiliated with the Chicago District Pipeline Company within the provisions of Section 8a of the Public Utilities Act.

22. No pipeline company other than plaintiff operates in or near the territory served by Chicago District Pipeline Company, and that plaintiff has no competition from other wholesalers of natural gas in the Chicago area.

23. The Illinois Commerce Commission has the power and is charged with the duty under the Public Utilities Act of fixing just and reasonable rates for the sale of natural gas at wholesale by Chicago District Pipeline Company.

24. In order to fix just and reasonable rates for the said Chicago District Pipeline Company the said Illinois Commerce Commission must inquire into the reasonableness of the operating charges of said Chicago District Pipeline Company and that in 1936 the operating expenses claimed to have been incurred by said Chicago District Pipeline Company amounted to $12,818,713.89, of which amount $12,362,288.15 was paid to the plaintiff for gas purchased from it under the terms of the contract hereinbefore referred to.

25. The Illinois Commerce Commission was fully authorized to enter the order of March 3, 1937, complained of herein.

26. The entry of the said order of March 3, 1937, by the said Illinois Commerce Commission did not deprive plaintiff herein of notice or an opportunity to be heard before said Commission.

27. In 1932 R. W. Gallagher, one of the officers of the plaintiff, testified as to the actual earnings and investment of said Natural Gas Pipeline Company, plaintiff herein, and estimates as to its future earnings before the said Illinois Commerce Commission in the proceedings involving the application of said Chicago District Pipeline Company for approval of its present rate schedule.

28. Said order of March 3, 1937, complied in all respects with the requirements of the Constitution of the United States of America and the Constitution of the State of Illinois as to due process.

29. It is reasonably necessary that the Illinois Commerce Commission investigate the earnings of plaintiff with respect to gas sales to the said Chicago District Pipeline Company, in order that said Commission might determine the reasonableness of the operating expenses of said Chicago District Pipeline Company.

The Court further finds as conclusions of law:

1. Natural Gas Pipeline Company of America, plaintiff herein, is not entitled to an interlocutory injunction in this

proceeding, since it has failed to show that it is being denied any constitutional right by virtue of the action of the said Illinois Commerce Commission of March 3, 1937, or that it is about to suffer irreparable injury or damage by reason of said action of said Commission.

2. The order of March 3, 1937, is valid and proper under the police power of the State of Illinois, since it is in the nature of a subpoena to compel the production of records for the purpose of enabling the Commission to determine the proper operating costs of a utility subject to its jurisdiction.

3. The order of March 3, 1937, being in the nature of a subpœna to compel the production of records for the purpose of enabling the Commission to determine the proper operating costs of a utility subject to its jurisdiction, does not violate Subsection 3 of Section 8 of Article I of the Constitution of the United States.

4. The order of the 3d day of March, A. D. 1937, does not violate the "Due Process" Clause of the Constitution, being Section 1 of the 14th Amendment to said Constitution, since the plaintiff is in possession of relevant information bearing upon the operating expenses of the Chicago District Pipeline Company, a utility subject to the jurisdiction of the Commission.

5. The order of the 3rd day of March, A. D. 1937, does not constitute an unlawful search and seizure of plaintiff's property.

6. The said Illinois Commerce Commission, under the provisions of Section 8a of the said Public Utilities Act, has the power to investigate transactions between the said Natural Gas Pipeline Company of America, a corporation, plaintiff herein, and the said Chicago District Pipeline Company.

7. The order of the Illinois Commerce Commission dated March 3, 1937, was duly authorized by the Public Utilities Act, and especially Section 8a thereof.

8. The application of the plaintiff, Natural Gas Pipeline Company of America, a corporation, for an interlocutory injunction should be denied.

Chicago, Illinois, July 2, 1937.
Enter:

WILLIAM M. SPARKS,
Judge of the United States Circuit Court of Appeals for the Seventh Circuit.

JOHN P. BARNES,
Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

WILLIAM H. HOLLY,
Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.